

The Regulating of
LAW-SUITS,
EVIDENCES, and PLEADINGS.

AN
ASSIZE-SERMON
Preach't at Carmarthen, March the 16th. 1656.

By *WILLIAM THOMAS* Vicar of Laughorn.

Inter leges ipsas delinquitur, inter jura peccatur. Innocentia non illis ubi defenditur, reservatur. D. Cypr. lib. 1. Ep. 2.



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Ex uno Integris

ERRATA.

Pag. 4. in the margin, for *proß.* read *prach.*

Pag. 8. lin. 19. read *ἵσταμα.*

Pag. 10. in the marg. read *καταγρηγορον.*

Pag. 25. in the marg. for *Pasiss*, read *Insiss.*

Pag. 29. lin. 21 and 23. read *Vatierotz* and *Vatierotz.*

ASSIZE-SERMON

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Exod. 20. vers. 16.

Thou shalt not bear false vvitnessse against thy neighbour.

LAwes are like fences, that serve for bounds, and for restraints. *Tully* call's the Law a dumb Magistrate, and the Magistrate a speaking Law. As the Magistrate doth rule and sway the people, so the Law doth rule and sway the Magistrate. Tul. de leg. l. 3.

The Almighty God (whose actions are our patterns) hath prescribed a Law unto himself. This is the first, and properly called the Law eternall.

And as the Divine wisdom of the Creator hath set a rule and measure to his own actions, so he hath ordained the like to his Creatures.

This is either an unwritten, or a written Law, (to borrow *Plato's* distinction.) The most famous unwritten Law is that of *Nature*; which *Iustinian* ex- Iust. Inst. Civ. l. 1. s. 2.
tends to all living creatures, but the Schoolmen confine to mankind, taking it for that which the Civiliansterm the Law of Nations.

Aquinas defines the Law of Nature to be, the Aquia. 1^a. 2^a. 491. 44.
participation of the eternall Law in the reasonable crea-
ture.

A Caution for the Client,

sure. Not to describe, to enwrap it in a cloud; the Law of Nature is, *a judgement naturally engrafted in our hearts, for the discerning of good and evil.*

This is the sovereign Rule, the Pole-star for the
 Rom. 2. 14. Heathens, *For if the Gentiles which have not a Law, do by nature the things contained in the Law, they having not a Law, are a Law unto themselves.*

Instit. Jur. Civ.
 l. 1. tit. 1.

Iustinian mentions three Precepts cast in this mould: to live honestly, to hurt no man, to render to every man his own. But our blessed Saviour requires the most renowned law of nature, even in the judgement of Heathen Sages, so much magnified by *Severus* the Emperour, that he commanded it to be engraven in his Palace; *Whatsoever you would that men should do unto you, do you even so to them.*

Matth. 7. 12.

Nature it self prompts us this equality, indifferent-ly to shift the scenes; to look upon our own actions with that rigour, as if they were another mans, and upon another mans actions with that candor, as if they were our own. But because this Law was not sufficient to bridle the disorderly passions of wicked men, God hath seconded and reinforced it with divers written lawes to his people.

The 1. for the deciding of their controversies. This was the *Judiciall* Law, raised to the Meridian of *Jerury*, framed to the Climate of *Palestine* (which as to other nations may indifferently be abrogated, or retained.)

The second for the regulating of their Rituals, the ordering of their Circumstantialls in Religion. This was the *Ceremoniall* Law of *Moses*; not to be mingled, blended with the Evangelicall doctrine, (as the *Ebionites* heretically asserted) not to be observed or approved

approved under the Gospel. The Synagogue is solemnly interred, the Iudiciall Law dead, the Ceremoniall deadly.

The third sort, the *Morall* law (the practicall test, the rule for conversation) is not yet destitute of life, or vigour. The Gospell gives no bill of divorce to this law, unstings onely, but not unlinews it; acquits believing repenting soules from the curse, not the observance; from the penalty, not the duty of it.

This Morall law is of eternall force, being comprised in the ten Commandments, which *Melanchthon* accounts the law of nature rightly expounded. These are not to be engraven in tables of stone onely, not in tables of brasse, (as the lawes of *Solon* weres) but to be imprinted in the tables of our hearts, to be copyed out in our lives.

I shall at this time (by Gods gracious assistance) take into consideration one distinct branch of it.

*Thou shalt not bear false witnesse against
thy neighbour.*

Before I treat of the matter of the prohibition, I shall offer at a cursory survey of the manner of the expression; like a limmer, that frames a rude draught of his work, before he drawes out the severall lineaments in full proportion.

That dreadful Iudge, who will require of us an account for every idle word, dictare's none himself.

Though there were many thousands of *Israelites* present, yet the charge is framed in the singular number (*Thou*) not in a loose generality prescribed to all, lest in a loose neglect it be observed by none. This denotes the divine mercy, That he vouchsafes to take

A Caution for the Client,

care of every man in particular; and chalks out our duty, That every man in particular make application of Gods law to his own conscience, as a compasse to steer by, as a rule to live by.

The Charge is in a future severe tenor, (*Thou shalt.*) This imports the perpetuity of the obligation, & the authority of it. It was proclaimed with thunder, and accented with lightning. If our obedience to Gods Law be not active, it shall be passive. If his Commandement be not punctually observed, his judgement shall be sharply inflicted; it shall and must be endured.

This Law is Negative: not an Edict, an Injunction limited with opportunities, conveniencies, to allay it's rigour; but an Interdict, a Prohibition, that admits no dispensation of time or place, to mince, or qualifie it.

Masculus.

This Prohibition serves as a glasse to present the uncomely complexion of the soul, it's unholy disposition, a swinge, a bent to false testimonies. Other offences are sorted, severed among the sonnes of men, but this is communicable to all. *Every man a liar*, (at least in a corrupt, vehement inclination of a heart unregenerated.)

Rom. 3. 4.

To proceed. Our *English* translation is too low & flat (*Thou shalt not bear:*) it is in the Originall *lo sagnaneh*, thou shalt not answer a false testimony.

It abates the lustre, the credit of a disadvantageous testimony (against a neighbour,) for to be voluntary.

Ioh. P. de Ferr.
in proff. For.
jur. Test.

An evidence that is commodious (behoofesfull) may (in some cases) be tendred; but if discommodious, it ought to be required: it is justified onely by an interrogatory,

rogatory,

rogatory, to be cited, required, examined.

That discovery which sounds an unmeet detraction, a dart of slander at the Table, may amount to a meet deposition, a fit Evidence at the Bar.

In the one case the rule of Charity debarrs it, in the other case the rule of Iustice warrants it.

It is not expressed, *Thou shalt not bear witnesse at all*, but *Thou shalt not bear false witnesse*. Courts of judicature are not abrogated, condemned in my text; but directed, regulated.

If no evidence could be produced, no innocence might be defended, no justice executed.

Whilst God brands and forbids a false testimony, he allowes, injoyns a true.

My Text explodes a false testimony expressly at the first blush that is pernicious, but secondarily, consequently, a false testimony that is officious also. An Evidence is not to be byast by favour, but truth. It is taynted not by the damage which accrewes to another, but the falshood which the Witnesse himself utters. As the expression of the Aēt, so of the Object challengeth our consideration, recommended by a propriety of relation, *Thy neighbour*. There is much emphaticall Divinity in Pronounes. The relation it self is presented in the widest latitude of sense, though the softest dresse for language. *Reamg.* a friend, a neighbour. A name that is a charme of truth. This expression endearcs, but restraines not.

A Neighbour, not for nearnesse of place, of situation; but of nature, of constitution. According to the Fathers glosse, Every man is a neighbour to every man.

*Omnis homini
proximus omnis
homo, S. Aug.*

I have thus broken the shell, the better to discern the kernell in my Text. I shall not critically enlarge any niceries of observations on the words, lest I be censur'd, like *Antoninus Pius*, to be a cutter of cummin-seed; or to deal with my Text, as the Levite did with his Concubine, to divide it in pieces: But I shall humbly conduct your attention from the manner of the expression, to the matter of the Prohibition.

The offence forbidden is a *false testimony*; which is brancht out to be extrajudiciall, or judiciall.

I shall entirely wave an extrajudiciall false testimony in discourse, without the pale of justice, and shall confine my meditation to a judiciall false testimony, as most sutable to the occasion of this present assembly. God grant the meditation may be as profitable as it is seasonable.

This judiciall false testimony at the first view is not unlike the little cloud ken'd by *Elijah's* servant; but it will spread like that cloud which quickly darkened the heaven. This will eclipse the whole Orbe, the Court of judicature, and showre down drops of guilt to every corner of it: it extends to the injustice of the Cause, to the injustice of the Evidence, to the injustice of the Pleading, to the injustice of the Verdict, to the injustice of the Decree, to the injustice of the Record.

As many of these parts as the time will conveniently permit, are the boundaries of my present meditations.

This is a varied gradation of transgression, a Climax, a ladder of sinne: not like *Jacob's*, that reacht from earth to heaven, for blessed Angells ascending and descending; but a ladder

it

as just weight.

Judg. 19. 29.

*Deus faciat tam
commodum
quam accommo-
dum.* S. Aug.
1 Kings 18.
verf. 44.

it is that reacheth from earth to hell, for lewd men descending in their corruptions, for damned Spirits ascending in their temptations.

The first Round in this ladder is, *the injustice of the cause.*

A Generation of men there is, who with more grains of zeal then knowledge disallow all Courts of judicature, all suits of Law without distinction, without moderation. Whose inconsiderate tenet is like a desperate Chymicall pill, that worketh not on the humors, but the spirits; that purgeth out of the body politick, not corrupt manners, but precious lawes.

It were piety exhale, refined to phrensy, holynesse strained to madnesse.

This were to sacrifice sheep to wolves, to invite those wolves to worry them; to open a gap to prophanenesse, to licentiousnesse; to encourage, to tempt all exorbitancies of tumults, of rapines, of murders; to leave the innocent (in the eye of man) without defence, or redresse, and the violent without check or controll.

It is truly alleadged, Vengeance is Gods prerogative; and it is as truly replied, that he executes it not onely immediately, by himself, but mediately also, by his Vicegerent the Magistrate (supreme and subordinate.) He is Gods Deacon, to officiate for him in the administration of justice; the sort of good men, to secure them from the assaults and outrages of the evil. He bears not the sword in vain: the sword being the emblem, the rhetorick of greater punishments, as the rod of lesse; to which end both were

*See 1st Cor. 14.
Rom. 13. 4.*

Same 2^d 4.

Camer. in Or.
pro Flacco.

were carried before the *Roman* Consuls. In the one and the other the Ordinance is Divine, but the exercise humane: God onely can empower, man may execute it. But not to scruce this string too far.

Though the lawfullnesse of Magistrates and Tribunalls may clearly, abundantly be vindicated, demonstratively maintained, yet law-suits are not indefinitely and peremptorily to be justified; unlesse we will run counter with the Apostle, *There is utterly a fault among you, that you go to law one with another.*

1 Corinth. 6. 7.

Melan. in 1 Cor.
6.

The scandall of the Church at that time, the reflection upon Christian religion, in exposing it by law-suits to the censure of unbelievers, is recited in the former verse (as *Theophylact* observes:) but in this 7. v. the Apostle condemns the action itself, (being not rightly qualified) displays it's guilt in the fullest dimensions. Some Divines start a Criticisme to mince it, That it is not exprest ~~κατασκευα~~ a default, but ~~ελαττωσις~~ a defect, a diminution, a lessening of Christian perfection, an impotency, a frailty: whereas both Greek words appear in the same uncomely hue, in the same unholy strain, *Rom.* 11. 12. There is an enhancing aggravation prefixed by the Apostle: It is utterly a fault. An error, according to the *Arabick*, a sin, according to the *Syrisc* Translation. The softnesse of the Greek word favours of the sweetnings of the Apostles style, not of the abating of the sin at *Corinth*. If we render this ~~ελαττωσις~~ a defect, it is a want of humility, of charity in most men: This defect will amount to a full default.

This diminutive, this lessening of grace (without speciall caution) will administer fewell to the increasing

sing offinne. This impotency, this spice of weaknesse will quickly be heightened to impiety, to a strain of wickednesse, to be subdued by a mans own passions, to be a captive to a solemn revenge.

Moses entirely cancell'd private revenge, but *Levit. 19. 18.*
Christ warily restrains the publick: *You have heard it* *Matth. 5. 38.*
hath been said, An eye for an eye, a tooth for a tooth.

The law *talionis* of returning like for like, wherein the sinne was made a pattern for the doom, (a law establish'd among the *Jewes*, approved by the twelve *Exod. 21. 24.*
Tables, eminently reputed, & anciently practis'd by *Arist. 5. Eth.*
Gell. At. N.
l. 20. Justin.
l. 4. tit. 4. de
injuriis.
many nations;) did not allow the parties themselves to carve out their own reparation, but the Magistrates onely: But our blessed Saviour pronounces a repeal to this judicall *Judaicall* redresse, as to the formality of it, not without a check to our fierce rancor, to our eager desire, and pursuit of such rigour; *But I say unto you, Resist not evil:* not *originalis*, according to the *Septuagints* use of the word, forbids the forwardnesse to prosecute in Law, to implead in judgement.

I shall not too confidently presse this sense.

However it is unquestionably the excellency of Christianity, to overcome evil with good, to conquer violence with patience; as fire is not quench't by fire, but water.

As to our Saviours Charge: In no case resist evil with tumult, with force; in all cases resist not evil with Law, with justice.

Suits of law are like bitter pills, that ought to be candied with due qualifications.

The first is, That the cause we contend in be just.

B

Other-

1.

Otherwise we design to abuse a Court of Law, of Equity; to make it a shelter for violence, a sanctuary for mischief, a protection for oppression: we endeavour to render Justice it self a Pander for malice, or avarice. A crime of the deepest dye, since a Magistrate is Gods Substitute; it is to make God a stale, a cloak for Satan, and, like the Witch of *Endor*, to present the Devil in *Samuel's* mantle.

The Apostle layes it to the charge of some Christians at *Corinth*, That they who were injurious, were querulous, contentious. They who oppressed, defrauded, yet complained, impleaded. *You* your selves *do wrong, defraud, and that your brethren.*

1 Cor. 6. 3.

Oecumenius observes a three-fold aggravation: the first, not to be passive, to be contentedly, patiently injured, (mentioned in the former verse;) the second, to be active, to be fiercely set to injure (whereas it is better, in the judgement of the wisest Philosopher, to suffer wrong, then to offer it; the third aggravation is, (*and that to your brethren*) to those that are endeared by the same womb, by the same dugs, (the two Testaments.) A link of relation, a charm to chase away the suits of Christians, especially such as are unjust, injurious.

Socrates.

Godw. Rom.

Ant. l. 3. f. 4.

Ἀλλή καὶ ἀλλή-
γων. In Arist.

Resp. Schol.

Among the *Romans*, before any Action was suffered to be entered, the Plaintiff was required to swear the justice of his cause. The *Athenian* practise was the same.

An unjust cause as it deserves a severe censure, when it is manifested, convicted; so also a speedy repulse, (if possible) not to be admitted.

2.

As for the first qualification, the cause ought to be

be just (no unholy interest;) so for the second qualification , it ought to be substantiall, weighty, not for every triviall petty slander, not for every light damage, every slight trespassse.

The Apostles negative question, (*Why do you not rather take wrong? why do you not suffer your selves to be defrauded?*) amounts to a positive determination. Some indignities, neglects are to be brooked , some injuries , some offences to be smother'd, rather then suits of Law are to be prosecuted. 1 Cor. 6. 7.

In our Saviours first instance of patience , though a personall provocation be rendred (*to smite thee on the one cheek;*) yet a hot reparation is not counsell'd, but a settled composition of mind (*to turn the other also:*) importing a readinesse to receive a second affront, rather then to revenge the first. Matth. 5. 39. Iud. Pel. l. 2. ep. 6.

In the second instance of patience, (in the next verse) the scene is expressly laid in judicature (though *Beza* labours, & wriggles to shift it off elsewhere:) But our *English* translation is agreeable to that of *Erasmus*, and the vulgar Latine, and renders the genuine force of the Originall; *And if any will sue thee at the Law, and take away thy coat* (thy meaner, inner garment) *let him have thy cloak also* (thy better, thy outer garment.) Vers. 40. ap. Blinus. If. Casaub. γυναι. ιουδαν.

In a case of so inconsiderable importance, as ordinary apparell, better it were to quit a double vestment, then to espouse a single quarrell, then to engage in one suit. Better in point of conscience, as to the next world: perhaps better also in point of prudence, as to this.

These instances are not speciall counsells onely ,

as to the excellency of perfection (in the *Romish* gloss) but generall precepts, as to the sincerity of Religion. Which will afford us this doctrinall Observation, That small wrongs are not commendable, (I had almost said) not warrantable grounds of suits and quarrells.

Deut. 1. 15.
Car. Sig. de
Rep. Heb. 1. 7.
6. 7.

Among the *Jewes* there were peculiar Officers, (significantly entitled by the *Septuagint* *παρακατασκευασται*) who were commissioned to admit or reject all causes; without whose approbation, and recommendation to the Judges, none were allowed to be determined.

Sigon. de Rep.
Atheniensis.

Of this use, not without an affinity both in name and nature, were the *Εισαγωγαι των διαφορων* among the *Athenians*; who were the keys of justice, to lock out all frivolous, vexatious suits.

These are unholy blemishes, unseemly, unworthy disturbances, and scandalls to Christian Courts.

3. As the Cause ought to be just, and weighty, so the mind ought to be calme and serene, not embittered with gall, not clouded with rancour.

1 Cor. 13.

The defect of the necessary grace of Charity stains other spirituall vertues, much more temporall jarrs.

S. James
3. 16.

ακαταστασια.

Even in a legall contention, when any suit of law is started, by reason of the temptation of Satan, and the corruption of a mans own heart, there is ordinarily a bosome leven of wrath, a spice of secret spleen, which is not destitute of a train of other guilt. *Where there is envying and strife, there is confusion, and every evil work:* There is perturbation, trouble (as *Erasmus* renders it) according to the Original, a discomposure, a disorder of the soul, a tumult of the passions.

Certainly

Certainly he is much damnified by his most successfull suit, who gains his cause. (be it his debt, his farme, his patrimony) who yet discards his charity, and consequently forfeits his Christianity.

As in suits of law there ought to be no malicious, so no coverous tincture.

In the cause propounded to our Saviour, for dividing an inheritance betwixt two brethren, (A cause that, in the judgement of some Expositors, had been bandyed in severall Courts) at last he that was worsted in all, and injur'd, having appealed to our Saviour, Christ doth not order a Writ of partition as a Judge, but read a lecture of mortification as a Prophet, *Take heed & beware of covetousness.* According Luke 12. 15. to an ancient *Greek* edition, according to the *Syriac* & *Vulgar Latine* translations, it is, *beware of every covetousnesse.* The caution thus rendred is fitly proportioned to the variety of the occasion. Though one brother onely were injurious in the eye of the world, yet both (in severall strains) were coverous, irreigious in the sight of God. The one unjustly detained what was not his own (his brothers portion, his moiety;) the other too eagerly pursued what was his own: whose thoughts were more eagerly bent, how to be redrest in his cause, then how to be reclaimed in his soul.

August. inser.
196.

Our blessed Saviour diverts, takes off his edge from the interests of possession, to the interests of Salvation.

Lastly, though the cause be just, weighty, and conscionable, the mind calm, pure, and charitable in a suit of Law, yet this ought to be the last refuge, That

4.

Omnia videntur

*prins tentanda
esse, quam ad ju-
dicia disceda-
mus. P. Mart.
in L. Com. cl. 4.*

Heb. 12. 14.
discedite.

there be an endeavour, a private treaty, a tryall for peace, before a publick jarre, a suit, a tryall in law.

Our bare affection to a reconciliation is not sufficient, without an active sollicitation. The Apostles word denotes not a bare following of peace, but an eager pursuing, (not to be waved for the hazard of fortune, of fame, of life itself, in the judgement of *Origen*.)

The motion of most men is fleet from it: but haste towards it, being clogg'd and fetter'd with pride and rancor.

We cannot unload, unmanacle our selves, unless before suits of law be commenced, all engines, and expedients for prevention be assayed. As candid Conferences: Both parties are oft-times bitterly enraged against each other, because they understand not a-right each other; they contend, because they converse not. *Abraham* the more innocent, venerable person, condescended to intreat his inferiour *Lot* (whom he had educated, obliged) to court him with the charm of their relation, with the rhetorick of an Hebraisme, *Let there be no strife betwixt me and thee, betwixt my hearersmen and thy hearersmen, for we are brethren.* It was no complementall condescension: he quits not onely titular respects, but reall advantages also; tenders the option, the choyce of the soyl, of the right hand or the left, of the North or South, (according to the *Chaldee Paraphrase*.) They are no *sonnes of Abraham*, who will not quit the least grain of respect, the least punctilio of right and advantage; who are devoted to an implacable spleen, wedded to an irreconcilable suit; who with the greatest hate and

Genes. 13. 8.

and expence, prosecute the least wrong and interest.

If candid conferences, calm discourses be not effectually to conjure out this evil spirit of contention, yet unpariall references may. The Apostles question sounds a reprehension: *Is it so? is there not a wise man amongst you? not one that shall be able to judge betwixt his brethren?* Not as touching one empower'd to doom, commissioned to sentence; but is there none qualified to discern, to intercede, to arbitrate, that private variances be not vainly and unnecessarily improved to publick suits? To be resolutely averse from arbitration, be mens causes never so just and pious, argues the spirits of such persons to be peevish, and contentious.

They are like Salamanders, that cannot live but in flames of debate. *Αἰεὶ γὰρ τὰς ἁγίωνων φλόγῃ.* Suits of Law are their darling delights, and designes. Their badge, and at last their entire treasure is a meer bundle of vexatious papers; the character of a phrantick person in *Theophrastus*. But I forbear. This first meditation, of the injustice of the Cause, hath too far transported me, which being once embraced, (as sinne must be fortified by sinne) will be seconded by the *injustice of the Evidence*, my next Consideration.

When *Numerius* confidently disclaimed a Crime that he was charged with before *Julian* the Emperour, *Delphidius* tartly objected, That if to deny, were to be guiltlesse, no man would be a Delinquent. But the Emperour gravely and acutely retorted, That if to be accused, were to be guilty, no man could be innocent. It is the Evidence alone that can give light to justice to acquit, or condemn.

When

When the Evidence is indirect, it insensibly sets a false byasse on the Verdict, and the Decree. For the degrees of justice are not unlike those of concoction: An error in the first degree is not to be corrected or redressed in the second, or the third. A false witness misguides, betrayes the Jury, and the Judge. He is an hammer, a sword, and an arrow (saith *Solomon*.) An Hammer to the Judge, whom he stounds & amazes, that he cannot distinguish betwixt truth and falsehood: a Sword to the party that corrupts him, a sword to fight for him, and a sword to pierce his soul: an Arrow to the innocent party, a poison'd arrow to fester, to wound him (with a rankling venom) in his life, his fortune, or his reputation. The consequences of a false testimony being so pernicious, witnesses are not loosely to be credited, or admitted.

Prov. 25. 18.

Bernard.



Decret. tit. de
test.

Mat. 18. 16.

In point of quantity of number, it is a rule in the Civil, & in the Canon-law, One witness is no witness. It is Gods own statute, *In the mouth of two or three witnesses every word shall be established.*

Alex. Al. S.

Th p. 3. qu. 43.

Aqu. 2^a. 2^a.

qu. 70. Art. 3.

Greg. dist. 2.

q. 1.

In point of quality, in reference to Religion, the Schoolmen and Canonists offer a Denfurror against those whose infidelity is profest (as manifest unbelievers,) against those whose impiety is convicted (as notorious scandalous miscreants.) In reference to Reason they debarre distracted persons, Idiots, and Children. Though *Seneca's* fancy, more ingenious than judicious, allows the age of seven years to be capable of rendering an Evidence: because Children are then old enough to observe, and too young to deceive, to dissemble. Upon this rational account, because of the ordinary defect of weight of
judge.

judgement, not onely the School-Doctors and Canonists, but the *Jewish* Rabbies, have in some cases excepted against the female sex to be Witnesses, in regard of their vehement swinge, and excesse of passion; their love being prone to be too fond and indulgent to preserve, their hate apt to be too fierce and violent to destroy.

In consideration of disaffection, the divinity of the School and Canon excludes Enemies from the capacity of being Witnesses; in respect of condition, Servants, and others whose relations are temptations to corrupt them, as also those whose necessities render them plyable to be moulded for the impressions of mercenary false testimonies, (Wherein I shall not track the scruples of the School, but the sinnes of the Court) in concealing, in mincing of truths, in venting untruths at the bar, in bolting out light uncertain conjectures, for firm and certain evidences.

Whereas it was a *Grecian* provident Law, That eares perk not for witnesses, That we make not the loose reports of others our stanch and sober testimonies. The *Jewish* Iudicatories admit none but eye-witnesses. Some false testimonies are notorious without paint, or disguise. Such was the double deposition against *Naboth*; *He hath blasphemed God, and the King.*

Others are more covert, when truth is presented but in a false dresse and accent. Such was the evidence against our Saviour; *This fellow said, I am able to destroy the Temple of God, and to build it in three dayes.* An evidence misinterpreted, misrelated. It ill becomes a Witness to be a Sophister. To equivocate,

*Ca. Aquin. ib.
can. dist. 32. q.
5.
Car. Sig. de R.
Heb. l. 6. c. 6.*

*Aquin. ib.
Non idonei tes-
tes quibus impe-
rari potest, ut
testes fiant, can.
dist. 4. q. 3.
Ne inopos sint,
Greg. dist. 2. q. 1*

Plutarch.

*Talm. lib. sho-
phetim.*

1 Kings 21. 13.

Marth. 26. 61.

to dissemble in ordinary conference is hainous; but in judiciary evidence monstrous. Subtle doubling expressions, dark winding reservations of witnesses, have perhaps been the lewd practice of all Ages, but the own'd tenet onely of the *Romish* Casuists of the last Age. The guilt of a false witness is much enhanced by his guile. He is worse then a murderer. A murderer destroyes the body naturall, but a false witness banes the body politick, (the administration of justice, which depends on the truth of witnesses, being the sinewes, nay the vitall spirits of a Commonwealth.) To raise this to a higher key of guilt. A false witness is worse then an Idolater. An Idolater makes an idoll a God; but a false witness makes God an idoll, makes a direct mockery of the Deity, as not discerning, regarding his falshood. He seems to disown, to outbrave Gods omnipotence, his omniscience, to deride, as it were to summon him to descend from his throne in heaven, to countenance, to abett his villany on earth at the bar. Whilst a false witness appeals to God as the supreme Iudge, he presumes, he tempts, he dares his vengeance.

The false witnesses who conspired against *Naboth* 1 Kings 21. 13 are decyphered children of *Belial*, Imps of Satan, because of the imitation of him, because plyable to be seduced at the beck of each lewd temptation. It is emphatically expressed, of *Belial*, that in Hebrew signifie's without a yoke: False witnesses are not yoked, restrained, not by the rule of truth, not by the equity of justice, not by the piery of an oath. This offence is a threefold cord of guile, not easily unravelled; it is twisted by a lye, an injury, a perjury. An Oath

Oath being the end of all Controversies, is the seal Heb. 6. 16. of depositions to ratifie them; it is the sacred stamp of religion, not to be soyled, falsified, prophaned.

The Evidences of the Grecian witnesses were sworn at their Altars, (as a holy tye, and solemnity.) Alex. ab Alex. l. 3. c. 10.
But *Xenocrates* was called back from the Altar by the I. act. in vita *Xenocrat.*
Areopagites, who accounted his assertion a sufficient asseveration, because of the strictnesse of his life, they esteemed his word as valid as an Oath; who may rise up in judgement against profest Christians, whose oaths are lesse credible then the bare word of a Heathen. Tell it not in Gath, nor publish it in the streets of Ascalon. 2 Sam. 1. 20.

It is Gods strict charge, Put not thy hand with the wicked, to be an unrighteous witnesse. That is, saith Exod. 23. 1.
Vasabius, Swear not unjustly; it being the customary practice of the Jewes, ancient and modern, in their Oaths to lay their hands on the *Thorah*, (the books of the law of *Moses*) to that end retained in their Courts. The Ceremony is thence derived to Christianity: But let it be more then an empty Ceremony, a heedlesse formality. When the Witnesse (or the Iuror) layes one hand on the Bible, let him lay the other on his heart; lest if he faulter in what he swears, he renounce his portion, the comforts, the ravishing mercies of the Gospel; lest he contract for, lest he inherit all the menaces, the terrifying judgements of the Law. Varabl. in Mo. ed. 23. 1.

The Proverbiall passage, *Lend me a testimony, was a foul stain to the *Greek* nation. Perjuries are ungracious lones, or boons, to gratify any man with villany. But the flurre is not confined to *Greece*. The Brit- *Quoniam in multis legibus Testimoniorum religionem & fidem nunquam illa natio coluit. Tull. in Orat. pro L. Flar.

A Caution for the Client,

riſh feuds, and quarrells of persons and families have in former Ages been prosecuted with swords, but in latter times with suits and perjuries: the tumults being lesse, but the crimes greater. Pardon my just indignation. I wish from my soul, it were a scandall to averre it.

Let not any inducement of affection or obligation, any tye of alliance, or dependance extend further then *Pericles* bounds, to the Altars; not to be endeared to any so farre, as in his behalf to be perjured; not to imagine to acquit our selves true friends by being false witnesses; not to purchase the favour of a mortall man with the frown, the doom of an immortal God.

The violation of justice by a false witnessse, the contempt of the religion of an Oath hath God for a sufficient avenger.

Let not any wonder, that a speedy earthquake doth not swallow up, that a fierce thunderbolt doth not crush and blast a false witnessse, to chastise his infolency: He sinnes against an invisible God, and hath an invisible punishment, the stings and lashes of a guilty conscience; which being seared, and pacified, this very serenity, this calmnesse is a preface of a succeeding lowring tempest. A false witnessse is recited among the abominations of the Lord: He shall not escape unpunisht. He may fence for a time from a humane vengeance, but a divine shall in the end oretake him. He shall not be clean, (saith *Vatablus*;) His offence shall be imputed, the deformity of his iniquity shall be presented, the stain, the horror of it discovered at the day of Iudgement. If these considerations

*mixti sumus.
Plut. in Apo.
phibeg.*

*Jurisjurandi
contemptu reli-
gio satis habet
Deum ultorem.
In c. de reb.
cred. et jur. l. 2.*

Prov. 19. 5.

tions scare us not from the injustice of the Evidence, the next refuge and prop is *the injustice of the Pleading*; which directs my humble addresse to you the Gentlemen of the long Robe.

To vilify your title, your Office, were in some measure to derogate from the sacred Trinity. God the Father is titled *Baalrib*, the pleader. It was *Dauids* humble suit to be Gods Client: *Plead thou my cause*. God the Son is recommended to us by the endearment of this name and notion: *We have an Advocate with the Father, Iesus Christ the righteous*: A Mediator for intercession to plead, as well as redemption to merit for us. The Holy Ghost is decyphered *ⲁⲩⲱⲛⲁⲛⲁⲛⲁ*. A word which in it's genuine signification more properly denotes the Pleader, then the Comforter. He pleadeth, maketh intercession for us, with the choicest flowers of Rhetorick, with grones that cannot be uttered. The truth of this criticism is honoured with the approbation of a Councell.

Psal. 119.

Psal. 35. 1.

2 John 2. 1.

John 15. 20.

Vox Græcæ frequens apud Indios in versione Chaldaica, & apud Thalmudicæ, non pro consolatore, sed pro eo qui causâ agit. Grot.

Quod Græcè ⲁⲩⲱⲛⲁⲛⲁⲛⲁ, hoc Latine dicitur Advocatus. Francoford. Com. vol. 3.

To question the expediency of your function, were to controll the wisdom of all or most nations which have owned principles of piety or civility.

There is no man that hath a more meet respect for your persons, nor a more venerable esteem of your profession, then my self. Yet there is no calling can justify the unjust practises of them that undertake it. As I am not to learn whose message I ought to deliver in this place, so I am not to doubt, but that your piety conducts you hither, not to censure the Preacher, but to practise the Sermon; not to look up to the pulpit, as to a stage, for the pleasing of an itching ear,

Tull. in l. 2. de
Orat.
Quincil. Inst.
l. 12. c. 10.

but for the searching, the lancing of an ulcer'd soul,
of a fester'd tongue, if any be; for caution, for pre-
vention, lest any be, by the injustice of pleading. A va-
ried injustice: By being engaged in more causes then
can sufficiently be discussed, or dextrously managed;
(a course resented, and taxed by Heathen Rhetorici-
ans) Were *Westminster* the Scene, I should here
with due reverence to the Sages of the Law crave
leave to adde, to amplify for illustration; By being
Intelligences in divers spears, pleaders in severall
Courts, as opportunities invite, whereby even in the
justest, weightyest interests, especially by the most e-
minent practitioners, whilst one Client is supported,
another at the same time at a little distance may be
unfortunately distrest; I say not betrayed, because
not entirely, voluntarily neglected, and yet perhaps
by this occasion irrecoverably ruin'd; Or by ingeni-
ous (perhaps injurious, irreligious) cavills to spin our
causes to the burdensome expence, the attendance of
Clients. I humbly offer it to your mature considera-
tion. Since there is a portion of benediction, of ad-
option expressed for those that compose jarres and
differences, (*Blessed are the peace-makers for they shall
be called the children of God*; they shall be owned,
crowned for such:) by the Topick proof, the rule of
Contraries, there is intimated a worse condition and
relation for such who are instrumentall, straining
their wits unnecessarily to create, to protract, to mul-
tiply suits; to be like bellows, to blow, to kindle these
flames, to fanne, to heighten them. A^b dilatory plea
for suspence of justice hath been sentenc'd by a Synod
with excommunication. But of this onely *is warned* the
by.

a Mat. 5. 9.
Nec licet ad-
vocato ex indu-
stria jurgium
protrahere. Alex.
Alenf. s. Th. p.
3. q. 44. m. 2.
b Advocatos ex-
communicamus
omnes qui ---
velut contra ju-
sticiam processum
causa diutius
suspendatur. Ox-
on. Syn. a. 1222.
Magd. Cent. 13.
cap. 9. de Syn.

The

The main injustice of pleading consists in deserting, in quitting a good cause; in asserting, in maintaining a bad. The former was the blemish of *Demosthenes*, who was muffled with the bribe of the adverse party, disengaged, and silenc'd by the rich present of *Harpalus*; which occasion'd a tart Sarcastme, that his disease was not *angina*, but *argentina*. There needs no multiplying glasse of a Rhetoricall aggravation to present the bulk, or hue of this guilt. The title of a prevaricator (a treacherous Advocate, that warps in pleading) is the blackest stain in the Civil law. *Ulpian* inserts such in the most infamous vicious list. I shall forbear to presse any dissuasive arguments (as to this horrid injustice) upon the same account as *Solon* and *Romulus* did to enact penalties against parricides, as presuming there are no such offenders; no Christian face so steeled to own, no conscience so feared for to practise such perfidiousnesse of wickednesse.

Plut. in vit. Demosth.

Tul. 2. Philip.

L. Aeternus §. pen. de his qui not. l. 1. §. qui de pos. de fal.

Plut. in vita Romuli. Tull. pro Sex. Rosc.

I shall insist onely on the latter branch of injustice, in vindicating, in pleading for a wicked cause. Whilst the misinformation of the Client misguides the Counsellor, this exempts an unjust plea from guilt. But when the cause pleaded for is manifestly injurious, the pleading it self is manifestly ungracious. This is to imitate the perfection, or corruption rather of the Greek Sophisters; To make the better cause the worse, the worse the better. It was the observed eminent faculty, and infamy of *Carneades*.

Tull. in lib. de cl. Orat. Quint. Inst. l. 12. c. 17.

It may passe for art and skill, but it must passe for sin also, to smooth and varnish the deformed complexion of a depraved interest. In this nature a painted

Lucian. in *A-*
nathar.

Iohn 5. 7.

a *Cloria Roma-*
na, Quintilia-
ne, toge. Mart.
b *Quint. Instit.*
l. 1. in prou.
l. 12. c. 7.
c *Plut. in vit.*
Cicer.
d *Plato in Gorg.*
& Phad.

e *Quint. Instit.*
l. 2. c. 15.

f *Tull. de glar.*
Orat.

ed cause is more irreligious then a painted face. Indirect proofs, patheticall strains, and proems were not allowed in pleadings before the *Areopagites* (the renowned *Athenian* Iudges.) Though a false flourish cannot feel the eyes, not delude prudent cautious Iudges; yet it may cast a mist, & beguile ignorant credulous Iuries, w^{ch} commonly are kneaded out of the dregs of the people; such as wait for empanellings, as the impotent person, the Cripple, did at the Pool of *Bethesda* for the troubling of the waters. But not to digresse. This false flourish is not consistent with the morality of Heathens, much lesse retoncilable with the integrity, the severity of Christians.

The a great Master of the Roman Rhetorick (*Quintilian*) b qualifyes his Orator to be a good man, wittingly and willingly to plead good causes onely. It became a great disrepute to c *Hortensius*, notwithstanding a great fee, that he appeared in the defence of the rapine and Sacriledge of *Verres*. d *Plato* sharply censures those who would separate justice from Rhetorick, truth from pleading, innocence from eloquence. Though it were the professed, it was the disgusted, the branded Paradox of e *Cornelius Celsus*, That the Advocates design ought not to be the pursuit of equity, but victory; not to regard the better cause, but to have the better in the cause, to countenance his Client, to be his Champion, be the cause right or wrong. Whereas it was the honour of f *Brutus*, That his tongue kept correspondence with his heart, he ever approved that Cause which he defended. The pleading of *Scavrus* was as solemne, as sincere, as a deposition. I shall adde onely

ly the lustre of *Phocion's* upright resolution, which set such an edge on his eloquence, that when he argued, it was apprehended, and dreaded, as a sword for to cut, and destroy the most vigorous false pleadings. I muster up these instances of the uncircumcised in the Temple, with no vain affectation, but I consider to whom I propound them, to literate, judicious persons, whose ingenuity may excite their blush, and anguish, by the recollection of these Heathen Worthies; who though they could not sufficiently acquit themselves, yet may serve abundantly to condemn others, who are accountable not onely for the bare talent of Nature, of Reason, but that of Grace also, of Religion.

As the injustice of pleading is exploded by the morality of the Heathens, so much more by the divinity of the Schoolmen. To^a afford advice, assistance, defence to an unjust cause, is in their opinion to cooperate, to share directly, eminently in the guilt, though but indirectly, obscurely in the first wrongfull fact. Though an oppressing, defrauding Client affords the womb to the injustice; yet the pleading Counsellor nurseth it (saith^b *Soto*,) he dandles, he cockers this pestilent brat. The Schoolmen stating this practice to be an evident print of iniquity, of injury, peremptorily^c prescribe restitution.

Indeed if the point of transgression be granted, that of restitution is not to be disputed. This was the fruit of *Zacchæus* conversion: *if I have taken any thing from any man by false accusation*, if I have^d acted the Sycophant: The phrase is borrowed from^e *Athens*, where the action was ordinary, a familiar calumny,

^a Alex. Al.
S. Tb. p. 14. 44.
^b 3.
Aqu. 2^a. 2^a.
qu. 71. ar. 3.
^c Dom. Soto
de last. 3. 5. qu.
2. Art. 3.
^d Scotus in 3.
sent. dist. 13.
Aqu. ibid.
Dom. Soto ib.
Passio conflict.
confusio. pulpo.
retar. 3. Peruci-
pans. manus. non
obstant. non ma-
nifestant. The
Schoolmen in
these verses
sort, and state
the cases of re-
stitution.
^e Et in compo-
sitione.
^f Schol. in Ari-
stophanis. Plat.
Sycophanta illi
Atheniensis fal-
so criminabatur
lucris causa.
Piscator.

falsly to charge men for conveighing away of Figs, that were prohibited to be transported thence. Though the occasion was speciall, yet our *English* translation is not improperly generall, ^a *If I have taken any thing from any man by false accusation, I restore to him fourfold.*

^a Luke 19. 8.

^b Aqu. 2^a. 2^a.

qu. 71. Art. 3.
in Concl. Licet
non sit proden-
dum qui bona fi-
de ad alium
confugit, non ta-
men est defen-
dendus: quia
qui defendit de-
linquentem ma-
ledictus est apud
Deum & homi-
nes. Gabr. in
Collect. l. 4. dist.

35. qu. 2.

c notitur hic

juramentum

quale debitum

est prastari per

Advocatos, ---

praesertim ut ni-

hil agant, vel so-

veant, quod in-

justum esse vel

crediderint ab

initio, vel post-

modum compe-

verint. Gers. in

2^a. p. Op. in ser.

in Cons. Rem.

d Clem. Alex.

in Strom. lib. 1.

e 1 Cor. 1. 19.

^a Isid. Pelusior.

l. ep. 67.

Isid. Pelusior.

l. 4. ep. 69.

If the injustice of the cause appears not in the first engagement for the Client, but in the prosecuti- on of the suit, ^b the secret of the cause is not to be betrayed, nor yet an apparent injustice to be promo- ted, pleaded for; but the cause is either absolutely to be deserted, renounced; or a private composure, a reconcilèment betwixt the parties litigant to be en- deavoured. *Gerson* ^c recites and recommends the Advocates solemn Oath to this effect.

As the determinations of the Schoolmen are se- vere in dooming all pleas in unjust causes, so are the invectives of the Fathers of the Church sharp in cen- suring them. ^d *Clemens* of *Alexandria* rejects this contentious fallacious faculty, brands it, with *Plato*, for a vicious skill, with *Aristotle*, for a pernicious rapine; He blasts it with the menace of the Holy Ghost, ^e *I will destroy the wisdom of the wise, I will bring to nothing the understanding of the prudent.* The most searching judgement, if unseason'd with Grace, will quickly be tainted, insensibly putrifi- ed, in the end entirely frustrated. To be an acute, po- lite Sophister, to enwrap a false plea in a fair elegant dresse, is to ^{*}temper poison in a golden viall; to bor- row the resemblance of *Isidore Pelusior*: Whilst (saith he) an Advocate vays, justifies another offender, he unmasks, condemns himself, discovers the

the depravation of his own heart, in the corruption, the dissimulation of his tongue. Nay, *Pelusiot*, transported with this meditation, conjectures this trim artifice of injustice to have been a speciall occasion of the Apostles large hyperbolicall expression, *The tongue is a fire, a world of iniquity*: Even in this restriction, this application of *Pelusiot*; This little member kindles the greatest contentions, combustions; and it self either commits, or shelters and encourages all the iniquities, the enormities in the world. *Theophylact* determines this malady incurable. To glance from the *Greek* on the *Latine* Fathers: *S. Austin* complains of the plausible lure of this injustice; Unhallowed wiles, and windings of subtiltyes in the managing, the pleading of unjust causes, being ^b reputed and magnified for singular parts and excellencies.

S. Iames 3. 6.

Ibid. Pel. l. 4. ep. 10.

a Theoph. in 1. c. ep. ad Rom. ult. vers.

b Hoc landabilior, quo fraudulenter. Aug. Confess. l. 3. c. 3.

To omit other copious testimonyes, and reproofs. *Bernard* runs variety of sharp descant on this impure note of guilt. *Who* have disciplined, trained their tongues in lyes, being quaint against justice, learned to promote falsehood, prudent to commit evil, eloquent to oppose truth, who revile innocency, obstruct all judiciary passages, block up the channels.

c Hi sunt qui decurrunt linguas suas loqui mendacium, disertum adversus justitiam, eruditum pro falsitate, sapientem faciem malum, eloquentes ut impugnent verum, obstruunt iudicii vias. Bern. de conf. l. 2. c. 10.

This character may (I fear) sound a Satyr in your cares. As for modern Divines, I know none, Reformed or Romish, that is an advocate to defend, to approve this injustice of Advocates. But if the tenet of the Schoolmen, the Fathers, be superciliously rejected by any as a fable, yet the sacred Scripture must be acknowledged for a rule, an Oracle. This is the

last and chiefeft test for to examine the injustice of pleading.

Exod. 23. 7.

It is Gods expresse charge : *Keep thee far from a false matter.* This distance imports defiance. As an indulgent countenance, a connivence on the Bench, so a smooth, oily defence at the Bar, is too near an approach to a false matter ; It is a step of the same sin, a progresse of the same injustice , though not in the same path. An unjust plea is a bait to an unjust decree. It was *Iehu's* rebuke of *Iehosaphat* , a question that pierced like *Ehud's* dagger ; * *Wouldst thou help the wicked, and love them that hate the Lord ? therefore the wrath of the Lord is upon thee.*

* 2 Chro. 19. 2.

g. An impio decu-
is se ferre opem?
Nov. ex Hebr.

transl. apud
Vatabl.

† Et augebat
BenDā:

a Psal. 15. 5.

b Non solum Iu-
dices, aut primo-
ros retranspubli-
carum iniquos

vult Vates in-
telligi, sed eos

quoque qui in-
justas forens et

protrahens li-
tes, compendii

sui causa. Fo-
leng. Mant. in

15. Ps. ult. c

c Vi malis cau-
sa patrocinium

accommodant.

Calv. in 15. Ps.

ult. vers.

* Nesimilis Iuda

officiatur, qui ac-

ceptis argenti pon-

dere vendidit

innocentē. Hier.

in 15. Ps. ult. v.

d Psal. 36. 3.

It is according to the Originall, *Hath it become thee to ayd the wicked?* As if no assistance of an ungodly person (in an ungodly enterprise) were decent, or innocent. † If thou succourest the sinner (as the Septuagint translate it.) The legall pleading for sin is a signall, principall succouring of the sinner. Whilst the offender is abetted, argued for; the party offend- ed is doubly injured. It is related by *David* as a co- gnizance, an evidence, a speciall note, a property of a true member of Gods Church , ^a not to take re- ward against the innocent. This is ^b not to be ap- propriated to the Iudge, but to be enlarged to the Sollicitor, the Attorney , eminently to the Counsel- lor. They receive unjust reward against the inno- cent who daub , palliate ^c unjust causes, by their fa- vours, their counsells, their pleadings. * *S. Ierome* strains this to be a resemblance of the offence of *Judas*.

It is the description of an unsanctified person, ^d *The words of his mouth are iniquity and deceit.* A terse false

false pleading is woven with this mingled thread. *He deviseth mischief on his bed,* (in the 4. v.) He contriveth it in his ^a heart, or it is his night study, his perplexity on his Couch, how to be prepared to enter into the lists in this quarrell, how to fortify, to shrowd and adorn this work of darknesse in the daylight. *He setteth himself in a way that is not good,* in 4. v. ^b *Pelusi* applyeth it to an expert Advocate, who is ready to engage in an ungodly cause, to help, to vindicate, to acquit it.

The close is in the same verse, *he abhorreth not evil,* or more agreeably to the Originall, *he rejecteth not evill.* He that pleades for any crime, neither sufficiently detests, nor discards it.

It is yet a more rowling, terrifying impeachment: *When thou sawest a thief, then thou ^c rankest* (or *thou consentedst*) *with him.* He who oppresseth, defraudeth, (who detaineth a just debt, saith *Philo*) is a thief. If thou seest him, or as soon as thou seest him craving thy defence, if thou runnest not with him to the bar to support his cause by pleading, thats *Valteretz*; yet thou mayest consent to him in the chamber by thy advice, that's *Valteretz*. *f* Both readings are solemnly allowed by Interpreters. I presume your ingenious souls do here take the cue, and tacitely object, That the Psalmists lecture is the *Levites* portion, a manifest bill of enditement of the Ministers guilt. Your thoughts may belike quivers fraught with arrows of retortions, That to preach false doctrines for lucre is more hainous, then to plead false causes; That it is more prodigious, in *S. Ignatius* language, to be *ἡμεῖς ἡμεῖς*, *ἡμεῖς ἡμεῖς*, to adulterate, to

a Cubile est cor.
Aug. in Ps. 36.
In cubile (i.e.)
corde corū. Hier.
Tempus nocturnum
in concubandis
flagitiis
consumunt. Fol.
Mant. in Psal.
36. 4.
b *Idem.* Pelus.
l. 4. Ep. 16.

c Malum non
abjicit. Nov. ex
Hebr. Transl.
apud Vatabl.

d Ps. 10. 18.
e *Quilper*
in Sept. ar. Cap.
rebus in N. Tr.
Curia in Vat.
Acquisitio ei
in Iun. & Tr.
translat.
Modi variis
rendi cum fure
recitatur à Gul.
Altiss. l. 4. q. 2.
f *Quantum ad*
Prophecia me-
tem, parum in-
terest utramvis
legamus; utru-
que est probabi-
le. Calv. in Ps.
30. v. 19.

huckster it in the Gospell, then the law, to abuse the message of Christ, then the cause of the Client, to make ungracious merchandise of religion then justice; and that an unholy, corrupt, mercenary tongue in the pulpit, is much more ulcerous, then at the bar. I abundantly confesse it is, and that the Prophets charge doth eminently appertain to us of the Ministry: and were I to preach to those of my own function, I should accent it with much more sharpnesse then I shall to you. And in the first place I desire to presse it with the greatest severity to my own soul, recollecting ^a *Origens* tears, and *S. Austins* ^b trembling in the recitall of this Psalm. But whilst it endites the Minister, it acquits not the Counsellor. The reproof is like a Mirrour, which being distinctly look't into, will discover disfigured lineaments of your profession, as well as mine. Do but withdraw the curtain,

————— *c Mutato nomine de te*

Fabula narratur: —————

and I may close as *Nathan* did with *David*, ^d *Thou art the man.* *e Thou givest thy mouth to evil*, givest full swinge, lettest the reins loose by a liberty, a licentiousnesse of wickednesse of a subtle voluble tongue. *Thy tongue frameth deceit* (in the same verse;) it smooths, it tricks, it polishes a cunning false plea; it hath quilted it round, according to the Septuagints expression. *g Thou sittest & speakest against thy brother.* As if judiciary detraction were an ordinary occupation. The act of calumny at the bar is vicious; much more the art, the custome, the habit. It is a blemish in a martiall profession; much more in a legall.

The Baptists Catechism to the Souldiers, ^h *Ascense*

^a Epiph. l. 2.
^b To. 1. *Har* 64.
^c *Videtur fra-*
tres cum quo tre-
more ista dica-
mus. August.
in Ps. 50. (suo
calculo 49.)
^d Horat.
^e 2 Sam. 11. 7.
^f Ps. 50. 19.
^g *illo male a-*
gentie. in nequi-
ter ac dolose be-
ne agere collan-
dabas. Hier.
Lingua tua con-
cinnas dolos. N.
Tr. septuaginta
Sept. 17.
^h Ps. 50. 20.
Sedebas, i. e. dili-
genter faciebas.
volebas ibi occu-
pari. Aug. *Se-*
dendo alludere
videtur ad judi-
cium, ubi in foro
ipso bonos &
simplices calum-
niantur improbi.
Calv. in 1 s. 50.
ⁱ Luke 3. 14.

no man falsly, is in Beza's judgement ^a more applicable to Courts, then Camps, to the bandings, the clashings of pleadings, then of swords. Neither the bar nor gown is priviledg'd for slander, (*b* Epictetus, a most famous Advocate, upon this account, for a single lapse of a virulent aspersiō, being excluded from both.) It is a tincture of the Rhetorick of hell. A false impeachment, though never so accurate, is a glimpse of the name and the nature of the Devil. It appears in a blacker aspect to revile, to traduce innocence, then to defend, to flourish an offence. However either practice hath an impure stamp, a destructive effect; it is the varied artifice of sin and Satan. *Isaiah's* sacred Rhetorick diswades from each: ^d Seek judgement, (sift out the equity of a cause, abett no unjust quarrell) relieve the oppressed, (be his director, his Counsellor) judge the fatherlesse, plead for the widow. Their desolate condition when injured, is most to be vindicated, succoured.

The same Prophet recordeth a woe for them *that justifie* (plead for) *the wicked for a reward*.

Though it hath past as a traditionall conjecturall opinion, that the damned rich man (in the Gospell) was an Advocate, and that he was most tortured, enflamed in that member, wherein he had most transgressed, (that the punishment might be proportion'd to the guilt;) yet I shall not seek light out of a cloud for the manifestation of this injustice, nor strain a proof out of a parable to excite the detestation of it. The restraint of it is written by the Apostle as in a sun-beam: *I have no fellowship with the fruitlesse works of darknesse*. Subtle pleadings are too grosse interming-

lings,

a Magni togata
quam armata
militia conve-
nit. Beza.

b Vir clarissimus
Epistetus causi-
dicorum more
prolapsus --- to-
ge forensis hono-
re privatus est.
Synmach. l. 5.
ep. 41.

c Hesiychius
illustrates dia-
bolum by aetologia.
Erasmus de-
rives diabolum
from diabolum

non traducere,
deserre, in An-
notat. 4. Mat.
d Isa. 1. 17.

Quarite judi-
cium, i. e. disquiri-
te diligenter jus
causae Judices

or patronos al-
loquitur. Diri-
gite negotia op-
pressi. Varabl.
in 1. Is. 17.

e Isa. 5. 23. Qui
justif. impium
phrasim Hebraica
est: Qui dicunt
causam impii es-
se justam. Va-
tabl. in Is. 5.
23. Non cau-
sas, sed dona
considerans.
Hier. in Is. 5.
23.

f Ephes. 5. 11.

Zanch. in Eph.
3. 11.

1 Tim. 5. 22.

Rom. 1. 16 v.

*Qui aliorum de-
fendit errorem
multo amplius
damnabiliter il-
li qui errant.
Gabr. in coll.
l. 4. diff. 15.
qu. 1.*

lings, too manifest blendings with covert trespasses, with mysteries of iniquities. *Oecumenius* glosseth every branch of wickednesse to be a work of darknesse (in the Apostles phrase.) To communicate with such, is not onely to cooperate, but either to counsell, or to countenance, to connive, to conceal. The antithesis (the opposition) expressed undenyably clears it; *but rather reprove them.* *Ελεγχει* denotes a discovery, not a disguise; a rebuke, not a defence. If to be seconds and combatants in unjust civill quarels, be not to be partakers of other mens offences, to swerve from, to violate the Apostles rule, I must confesse, I understand not what is. Said I, to partake? It is to exceed, to improve, to outstrip their offences by a further start of unholy proficiency.

S. Paul having recited a catalogue of miscreants, he summes up all, *They not onely do the same, but have pleasure in them that do them.* They associate themselves, according to the *Syriac*; are linkt with, entertained, interested, advantaged by those that do them, are Advocates in their behalf: so *Beza* and *Erasmus* interpret it; so *Theophylact* expounds it by *συνοχισμῶν*, they plead for those that do them. This is an aggravation beyond the horror of the act, for to evade the last earthly refuge of injury, to elude the solemn redresse of justice. The offence argued for may be a sudden passion, a surprizall; but the arguing it self is a deliberate design: The one may be a private injury, the other is a publick injustice, a more eminent sin and scandall. This is for to hide an unseemly scar or wen in another mans face, and to discover a worse blemish, a wound, an ulcer in ones own.

The

The first commission of a Clients wrongfull fact (in an unjust cause) entitles him a Delinquent; but the additionall justification by pleading tempts him to be impenitent : wherein the finer the varnish is of the Counsellor, the fouler is his sin.

This is no temper of a *Nathaniel*, an *Israelite indeed in whom is no guile*. Nor yet may the integrity of the heart be alledged, notwithstanding the Sophistry of the tongue. *By thy words thou shalt be justified, and by thy words thou shalt be condemned.* John 1. 49. Matth. 12. 37.
However this is not to copy out the pattern of our Redeemer, *In whose mouth there was found no guile.* 1 Pet. 2. 22.
It is an Hebraism, There was no guile to be found.

If the nice subtilty of indirect pleading be not intended to be effectuell, it is to deceive the Client; if it be intended to be effectuell, it is to deceive the Jury or the Iudge, thereby to injure the innocent party at least in the purpose, the endeavour of the Counsellor. Either edge of the *dilemma* is a sharp fallacy to his own conscience, to beguile himself; though for a while it appeareth not, it pierceth not. The spreading practice of this injustice unhappily escapes in most a resentment of it's guilt. But a multitude of offenders is no security for an offence before the Divine awfull Tribunall. Hereby God is most enraged, and man most depraved : the face being rescued from a blush without, & the heart from a sting within. The Stoick tutours us better Divinity, not to trace mens steps, but Gods rules; not to steer by other vessells, but the starres; not to regulate our courses by examples, but precepts; not to regard what the most numerous or famous of a profession doe, but what they ought to doe.

*Non quæritur,
sed quotandum.
Sen.*

E

It

Exod. 23. 2.

It is Gods strict indispensable prohibition, *Thou shalt not follow a multitude to do evil: neither shalt thou speak in a cause, to decline after many to wrest judgement.* The fairest glosse imaginable for false colours, plausible pretences in unjust pleadings, is an officious lye; which though recorded in Scripture in the Historicall passages of some eminent Saints, yet it is very rarely: recited it is as a frailty to be eschewed, not as a duty to be imitated. The Primitive Christians would not allow, not employ this unholy engine in the fiercest persecution for a preservative of their own lives, much lesse of the fortunes, the liberties of others. S. *Austin* copiously disproves, vigorously condemns it. A gracious intention cannot warrant an ungracious action. He that doth evill that good may come of it, his condemnation is just. To offer this Apology is to act *Apelles* part, to present the injustice of pleading, as that Painter did *Antigonus*, with half a face: one part of the countenance discovered being a comely amiable aspect, an officious serene eye towards the Client; but the other part of the visage concealed looks a squint, and casts a pernicious glance on the opposite party.

Nor yet is the spell of profit a sufficient inducement, a warrant for the injustice of pleading. Could every cause procure a shower of gold, (*Jupiter's* boon to *Danae*) could your purchases, your mannors be multiplyed faster then your fees, had you a Kingdom for a garden, a sea for a fish-pond, could you engrosse the clouds, the Sun-beams to dispose each drop of rain, and ray of light at your own rate and pleasure; yet *what shall it profit a man if he gain the whole*

*Oi βασιλευς & ἡ
ἡγεμονία τῆς
Iust. Mart. in
Apol. 2. pro
Christi.*

*Aug. in. l. de
mend. ad Con-
sent.
Rom. 3. 8.*

Plutarch.

Mark 9. 36,

whole world, and loose his own soul? In your languishing, gasping condition, your own consciences will resolve the question put out of all question. It will nothing profit: and being thus resolved, the determination is a *Meiosis*, an extenuation; it will not be his profit, but his dammage, his bane. An indirect transitory gain smooths the passage to a direct forfeiture of blisse, a perpetuity of misery. *What shall a man give in exchange for his soul?* what recompence, what truck shall he have for his soul; as the word imports. Money is the ordinary unholy rate for it. Yet since the whole world is not to be ballanced with it, what folly, what phrensy is it to prostitute a precious inestimable soul to vile gaines, to mean inconsiderable advantages, to raise your fortunes temporally on the ruines of your selves eternally? *The getting of treasures by a lying tongue, is a vanity tossed to and fro of them that seek death.* The glosse on the words applies them to the injustice of pleading. It is a dismall aphorisme, and it should not have dropt from my mouth, had it not proceeded from the Holy Ghost. *Spira*, the disconsolate example of despair, first maintained false causes in Law, & afterwards renounced true retorts in Religion. To be a corrupt Advocate was his first step towards hell. I shall not recommend *Tersulian* for a pattern, whose quitting his profession of Advocate (upon his conversion to Christianity) was a very unnecessary rigour. But beware of *Tersullus* stamp, whose eloquence dispenced with his conscience. Let not the lustre of your Rhetorick abate the light of your Religion. Let not any exquisite ability in the law prepare a *fucus*, a paint for oppression, or

Mark 8. 37.

in avaritia

Prov. 21. 6.

Tert. in l. de
Passione, c. 5.

Ipse Christus
Advocati officium non paucis

imperiis est; ut
Magdalena, item

in mulieris de adulterio accusa-

tione, & in Di-

scipulorum variis criminatio-

nibus. D. Ambro-

11 annis in curia & foro causas egit. Germanus & Lipardus

in numerum
Sanctorum rela-

ti. Dor. Mart. de iur. p. 4.

Cent. 2. ca. 15.

malice : let not so sweet an oyntment be spilt upon an unfavoury cause, to be ingeniously ungracious, accurately irreligious. It is an uncomfortable commendation, an unhappy elogy, to be a better lawyer then a Christian, to be more acute then upright, to plead well in ill causes. It is a perfume to the fame of *Ivo*, that he pleaded onely for the afflicted, vindicated the oppressed, being entitled the Advocate of the poor, and canonized for a Saint. Give not cause to present or succeeding ages to apply to any of you that character of *Calius* an Advocate, (which sticks a flurre, a taint to his name unto this day) for to be reputed worthy of a better mind, of an honest-er soul; for to be the pearl of Advocates in the *French* style, and yet not to appertain to Gods cabinet in the day that he shall sort, make up his jewels.

To conclude this caveat : Let not your counsellors, your pleadings be tempered with more grains of the Serpent, then the Dove. Let not your profits exceed, eclipse your graces. The fees of just causes onely can entayl blessings to your families, and assure comforts to your souls. With melting bowells I tender this unwelcome meditation to your candid censures, to your retired mortified thoughts, which lay upon my own (being call'd to this place) like a weight of lead, untill I utter'd it.

I have freely discharged my conscience in the presence of God and this Congregation, and should now proceed from the injustice of the Pleading to the injustice of the Verdict, of the Decree, of the Record. But the time hath trod upon my heels : like a wearied traveller I must take up my rest, before I have

scarce

Surius 29. Maii.

Quint. Inst.
l. 10. c. 1.

La perle des
Advocats.

scarce finisht half my journey; and, like *Issacbar*, must stoop betwixt two burdens.

I have therather enlarged my meditation on the three first rounds of Injustice, because Courts are like Elements; the corruptions, the distempers above take their rise from exhalations from below. Unjust causes, indirect evidences and pleadings are the source and bane of all judiciary proceedings. Well we may juggle with men on earth; we cannot play the Sophisters with heaven, and put a cheat on our God.

As for all sorts and degrees here present; When you hear the trumpet sound, let it be an alarm to your soules, to rowze you to an apprehension of the generall Sessions of the great judgement of the world, when we shall all appear before the judgement-seat of Christ; not onely appear, but become transparent, like *Drusus* fancied house of glasse. Our minds shall be as clearly seen, as conspicuous, as our faces. Then all the Iudges of the earth shall stand at the Bar. The Counsellors must plead for themselves, render an account for every idle word. If for every light frivolous, *pro otioso*, much more *pro odioso*, for every false scandalous plea. Then the books of records, our own consciences shall be unclasped, to be manifest evidences of our secret sinnes in the sight of God, of Angells, and men.

No unjust causes, no corrupt evidences or pleadings can taint this judgement, no demurror can shift it off, no quirk or subtilty reverse, no power or authority repeal it.

Let us be awfully prepared, conscientiously quali-

2 Cor. 5. 10.

Οὐ διαφανήσονται, ἀλλὰ ὡς ἡ γυαλίνη οἰκία, ἥτις ἐστὶν, Chrys.

Matth. 12. 36. Ambros.

Matth. 25. 34.

fyed at this great Sessions; that at the approach of a farre greater, we may be graciously summon'd, and acquitted by the dreadfull Iudge of men and Angells; that we may be refresh't, ravish't with the joy and solace of that sentence, *Come you blessed, inherit the kingdome prepared for you from the foundation of the world.*

Wherein God of his infinite mercy estate us, for the merits of his Son, and our alone Saviour *Ie-
sus Christ*; to whom and the Holy Ghost be glory & honour, power, majesty and dominion ascribed this day and for evermore.

Amen. A-
men.

F I N I S.



